

SKID ROW NEIGHBORHOOD COUNCIL FORMATION COMMITTEE v. CITY OF LOS ANGELES

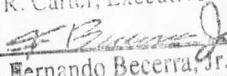
Case Number: BS170257

Hearing Date: February 5, 2020

Superior Court of California
County of Los Angeles

FEB 05 2020

ORDER DENYING WRIT PETITION

Sherri R. Carter, Executive Officer/Clerk
By  Deputy
Fernando Becerra, Jr.

Petitioners, Skid Row Neighborhood Council Formation Committee (SRNCFC), Jeff Page, and Katherine McNenny, bring this action against Respondent, the City of Los Angeles.¹ This action arises from Petitioners' unsuccessful attempt to form a Neighborhood Council for the Skid Row area in Downtown Los Angeles.

In Petitioners' Fourth Amended Petition (FAP), filed on October 17, 2019 without leave from the court to do so, Petitioners allege:

- (1) Respondent violated Los Angeles Administrative Code section 22.819, subdivision (b) by permitting pop-up polling stations outside boundaries of the promised Skid Row Neighborhood Council subdivision;
- (2) Respondent acted without authority by keeping polling locations near on election day open for only four hours and permitted pop-up polling that was not authorized by the City Council;
- (3) Respondent violated Los Angeles Municipal Code (LAMC) section 49.5.5, subdivision (A) by limiting the locations and hours of polling stations and suppressing voting for homeless voters;
- (4) Respondent violated LAMC section 49.5.5, subdivision (A) by locating eight polling places in locations that were unduly burdensome to access (behind metal detectors or required personal identification);
- (5) Respondent violated Los Angeles Election Code section 1220 and is now unable to authenticate any online votes such that all online votes should be declared void and removed from the final vote tally;
- (6) Respondent's use of online voting violated California Elections Code section 19205, subdivision (a) and therefore must be voided; and
- (7) Respondent abused its discretion by refusing to accept the Regional Grievance Panel's recommendations on Petitioners' election challenges.

Through this action, Petitioners request the court: (1) shift the burden of proof to Respondent to demonstrate SRNCFC lost the 2017 subdivision election; (2) prevent Respondent "from

¹ Petitioners actually named the City of Los Angeles, its Department of Neighborhood Empowerment (DONE), the Los Angeles City Counsel and Grayce Liu, the General Manager for DONE. Ms. Liu is not sued in her individual capacity. Thus, while Petitioner has named a number of Respondents, the City of Los Angeles is in reality the single Respondent here. Accordingly, the court refers to that one Respondent herein.

submitting its final vote tally into evidence"; (3) determine the official vote count to be ruled as 183 "Yes" votes to 19 "No" votes thereby deeming SRNCFC the winner of the election; (4) determine votes from some of the pop-up polling locations be deemed void; (5) find only certain votes made at the James Wood Community Center be counted in the election; (6) order DONE to certify the election in favor of SRNCFC; (7) overturn DONE's decision to the election challenge; and (7) order any other relief the court deems appropriate.

Petitioners expressly state "ordering a new election is not an appropriate remedy." (Opening Brief 2:10.) Instead, Petitioners desire a court order declaring SRNCFC the winner of an election. They argue "the only appropriate remedy should be to grant SRNCFC its own neighborhood council outright." (Opening Brief 8:17-18.)

Respondent opposes the petition.

The petition is denied.

STATEMENT OF THE CASE

Following the adoption of Los Angeles Administrative Code (LACC) section 22.820 (the Ordinance) in September 2016,² Petitioners submitted a petition to DONE seeking assistance in creating a new Skid Row Neighborhood Council in between the existing neighborhood councils of the Downtown Los Angeles Neighborhood Council (DLANC) and the Historic Cultural Neighborhood Council (Historic). Petitioners' petition required a vote under the Ordinance. (AR 105.)

DONE conducted an election on April 6, 2017. (AR 40.) The election took place at physical polling locations as well as online. (AR 40.) The canvass of votes revealed Petitioners lost the election to establish the Skid Row Neighborhood Council, with 826 "No" votes and 766 "Yes" votes. (AR 247.)

Petitioners thereafter filed three election challenges with DONE, alleging that DLANC improperly interfered with the election. (AR 3-35.) On May 13, 2017, an election challenge panel conducted a hearing to consider Petitioners vote challenge. (AR 1.) The election challenge panel upheld the election challenges and recommended an independent investigation. (AR 64.) Ultimately, DONE, through Liu, rejected the election challenge panels recommendation and determined Petitioners' election challenges were without merit and certified the election results. (AR 64-66.)

On July 19, 2017, petitioners filed their initial writ petition.

² In September 2016, the Los Angeles City Council approved the Ordinance which established a procedure for stakeholders who wished to subdivide already-existing neighborhood councils to create a new neighborhood council within the same boundaries. (See LAAC §22.820; AR 115.)

STANDARD OF REVIEW

Petitioners seek relief pursuant Code of Civil Procedure sections 1085 and 1094.5. (FAP 9: 8-9.) Despite the Los Angeles Superior Court Local Rules (Local Rules) governing these proceedings, Petitioners have not specified “the portion of supporting evidence pertaining to each mandamus claim.” (Local Rule 3.231, subd. (i)(1).) Neither have Petitioners provided “a statement of the facts which fairly and comprehensively sets forth the pertinent facts, whether or not beneficial . . .” (*Id.* at subd. (i)(2).) Petitioners have also failed to support “each material fact” with “a citation to a page or pages from the administrative record . . .” (*Ibid.*) Lastly, Petitioners have failed to set forth the applicable scope of review. (*Id.* at subd. (i)(3).)

Petitioners’ claims are jumbled and difficult to decipher.³ The court cannot determine from Petitioners’ briefs whether their claims are for traditional or administrative mandamus. Petitioners have failed to cite any fact in the administrative record. Their opening brief contains not a single legal citation save one reference to the Ordinance.

Administrative mandamus is governed by Code of Civil Procedure section 1094.5. Administrative mandamus is used to inquire into the validity of a final administrative order after a hearing where evidence is taken. Subdivision (b), of Code of Civil Procedure section 1094.5 provides the issues for review of an administrative decision are: whether the respondent has proceeded without jurisdiction, whether there was a fair trial, and whether there was a prejudicial abuse of discretion. An abuse of discretion is established if the respondent has not proceeded in the manner required by law, the decision is not supported by the findings, or the findings are not supported by the evidence. (Code Civ. Proc. § 1094.5, subd. (b).)

Traditional mandamus relief is authorized by Code of Civil Procedure section 1085. That section provides: “A writ of mandate may be issued by any court to any inferior tribunal, corporation, board, or person, to compel the performance of an act which the law specially enjoins, as a duty resulting from an office, trust, or station. . . .” A petitioner can obtain writ relief, pursuant to Code of Civil Procedure section 1085, upon a showing of “(1) A clear, present and usually ministerial duty on the part of the respondent . . . ; and (2) a clear, present and beneficial right in the petitioner to the performance of that duty. . . .” [Citation.]” (*Baldwin-Lima-Hamilton Corp. v. Superior Court* (1962) 208 Cal.App.2d 803, 813-814.)

Accordingly, traditional mandamus requires a petitioner to identify an applicable ministerial duty. “A ministerial duty is an obligation to perform a specific act in a manner prescribed by law whenever a given state of facts exists, without regard to any personal judgment as to the

³ Further complicating matters, it does not even appear the parties agree on the operative petition. The court granted leave to Petitioners to file a third amended petition. They did so on July 27, 2018. For some reason, without leave of court, on October 17, 2019, Petitioners filed a fourth amended petition. The court has proceeded here on the fourth amended petition. Doing so, in the court’s view, is not prejudicial to Respondent.

propriety of the act. [Citation.]” (*Center for Biological Diversity v. Department of Forestry & Fire Protection* (2014) 232 Cal.App.4th 931, 952.)

Of course, different standards of review apply depending upon the relief requested by a petitioner. Irrespective of whether the independent judgment or substantial evidence standard of review applies, issues of law related to an administrative decision, such as interpretation of statutes and regulations, are addressed *de novo* by the court. (*Hoitt v. Department of Rehabilitation* (2012) 207 Cal.App.4th 513, 522.) Additionally, “[a] challenge to the procedural fairness of the administrative hearing is reviewed *de novo* . . . because the ultimate determination of procedural fairness amounts to a question of law.” (*Nasha L.L.C. v. City of Los Angeles* (2004) 125 Cal.App.4th 470, 482.) Lastly, matters involving due process are questions of law reviewed independently by the court. (*Mohilef v. Janovici* (1996) 51 Cal.App.4th 267, 285.)

ANALYSIS

Administrative Mandamus and Code of Civil Procedure Section 1094.5:

Administrative decisions are afforded a presumption of regularity. “Thus the burden of proof falls upon the party attacking the administrative decision to demonstrate where the proceedings were unfair, in excess of jurisdiction, or showed ‘prejudicial abuse of discretion.’” (*Gong v. City of Fremont* (1967) 250 Cal.App.2d 568, 574; see also Evid. Code § 664. [“It is presumed that official duty has been regularly performed.”]) Reasonable doubts are resolved in favor of the administrative findings and determinations. (*San Franciscans Upholding the Downtown Plan v. City and County of San Francisco* (2002) 102 Cal.App.4th 656, 673–674.)

As there is an agency administrative decision at issue here—the decision by DONE to deny the election challenge and to certify the election—Petitioner might properly proceed under Code of Civil Procedure section 1094.5. That is, the agency decision is before the court. (AR 64-66, 248-371.)

Petitioners’ brief, however, is silent as to how the agency decision (1) is without or in excess of jurisdiction, (2) resulted from an unfair trial, (3) or a prejudicial abuse of discretion. It is not the court’s obligation to cull through the record in search of some alleged agency error on behalf of a petitioner. (See *Guthrey v. State of California* (1998) 63 Cal.App.4th 1108, 1115 [“‘The reviewing court is not required to make an independent, unassisted study of the record in search of error or grounds to support the judgment.’ [Citations.]”].)

Petitioners’ Opening Brief does to some extent reference the administrative proceedings in its introduction section. Petitioners contend they exhausted administrative remedies. (Opening Brief 2:27.) Petitioners also complain the agency decision rejected the recommendation of the election challenge panel, “did no investigation at all,” and yet, still certified the election. (Opening Brief 3:3-4.)

Under the only argument heading in the brief entitled, “Petitioners have made a *prima facie* showing that the City of Los Angeles used deceitful tactics to intentionally undermine the election process, the election itself and the election results,” Petitioners argue the election was “unfair” because “the outcome was determined in advance.” (Opening Brief 4:15-16.) Petitioners provide no analysis of the agency’s decision and a prejudicial abuse of discretion—that is whether the evidence supported the findings and/or the findings supported the agency’s decision. Petitioners’ lengthy argument section, unsupported by any citations to the record, merely argues Petitioners’ view of the events.⁴ Petitioners’ concluding paragraph is telling:

“Petitioners believe they have presented many facts establishing more than ‘coincidences’ which appear highly unusual, improper, illegal and certainly enough to be considered strong circumstantial evidence that the City of Los Angeles acted corrupt to its [sic] core in regards to the governance of the 2017 Skid Row Subdivision election. This adds to the undeniable and irrefutable evidence also presented by Petitioners in their writ and exhibits which, in totality, all combine into an overwhelming display of evidence in favor of Petitioners requests for judicial relief.” (Opening Brief 7:1-6.)

Petitioners fare no better by relying on the arguments they raise in their writ petition in their quest for Code of Civil Procedure section 1094.5 relief.⁵ The causes of action alleged are argument headings—e.g., “The Subdivision Ordinance requires that the voting location be within the boundaries of the proposed neighborhood council and Petitioners contend that votes cast anywhere outside these boundaries are void and should be removed from DONE’s final vote tally,”[the Poll Location Claim] (Petition 23-24); and “Neither the Subdivision Ordinance nor the City Council authorized the use of [pop up polling] thus all votes cast at any [pop up polling] other than at the James Woods Community Center should be voided and removed from DONE’s final vote tally” [the Single Poll Claim]. (Petition 25.)

While the court need not rely on legal and factual arguments made in a writ petition and then not raised in a trial brief where doing so would greatly exceed rules for page limitations, the court briefly addresses the Poll Location Claim and Single Poll Claim here in an effort to demonstrate their lack of merit.

As for Petitioners’ Poll Location Claim, they have cited nothing in the administrative record to support their claim certain polling facilities were outside the proposed subdivision. (Petition 24.) Thus, their claims are factually unsupported. Moreover, Petitioners’ interpretation of the Ordinance does not address what “within the boundaries stated in the subdivision petition”

⁴ As noted earlier, under the Local Rules, Petitioners are required to set forth all pertinent facts, including those that are not beneficial to their position.

⁵ The opening brief for trial of a petition for writ of mandate is limited to 15 pages. Petitioners’ Opening Brief consists of 8 pages. To the extent Petitioners rely on their 52-page petition for additional argument for writ relief (assuming such reliance was appropriate), they exceed their page limits by 45 pages.

means in light of all stakeholders of a neighborhood council affected by a proposed subdivision being permitted to vote. (AR 115.) The reasonable interpretation given to the language referenced by Petitioners by Respondent in its administration of the Ordinance (which is entitled to deference) is not about geography as suggested by Petitioners but instead about who may vote—those in all affected neighborhood council districts. (AR 102.)

As for Petitioner's Single Poll Claim, Petitioners' claim pop-up polling was never authorized by the City Council is unsupported by any reference in the record. Moreover, the claim ignores DONE's Neighborhood Subdivision Manual advising of pop-up polling as well as online voting. (AR 116.)

The arguments contained in Petitioners' trial brief filed with the court do not demonstrate how they are entitled to relief from the agency decision pursuant to Code of Civil Procedure section 1094.5, subdivision (b). They have argued nothing specific within the ambit of Code of Civil Procedure section 1094.5 this court can review.

Traditional Mandamus and Code of Civil Procedure Section 1085:

As noted earlier, "To obtain a writ of mandate under Code of Civil Procedure section 1085, the petitioner has the burden of proving a clear, present, and usually ministerial duty on the part of the respondent, and a clear, present, and beneficial right in the petitioner for the performance of that duty." (*Marquez v. State Dept. of Health Care Services* (2015) 240 Cal.App.4th 87, 103.) Said another way, "the petitioner bears the burden of pleading and proving the facts on which the claim for relief is based." (*California Correctional Peace Officers Assn. v. State Personnel Bd.* (1995) 10 Cal.4th 1133, 1153.)

The court agrees with Respondent—Petitioner has failed to provide any cognizable legal claim which would result in this court declaring SRNCFC the winner of the April 6, 2017 election. To prevail under Code of Civil Procedure section 1085, Petitioners must demonstrate the City failed to perform a clear, present and ministerial duty. (Code Civ. Proc. § 1085.)

Petitioners' trial brief does not identify a ministerial duty requiring Respondent to change the April 6, 2017 election results. Petitioners have not provided any legal authority that would require or permit this court to change the results of an election based on alleged procedural or technical problems with that election. Petitioners expressly stated "a new election is not an appropriate remedy" here and that the only "appropriate remedy" is to grant SRNCFC "its own neighborhood council outright." (Opening Brief 2:10 and 8:18.)

Petitioners' trial brief focuses on alleged collusion between Respondent, DLANC, DONE and "numerous City of Los Angeles employees . . ." (Opening Brief 4:12.) Again, with no references to the administrative record, Petitioners recite a litany of facts to support their claim that there is "strong circumstantial evidence that the City of Los Angeles acted corrupt to its [sic] core in regards to the governance of the 2017 Skid Row Subdivision election." (Opening Brief 7:3-4.)

To the extent Petitioners contend their exhibits submitted with their writ petition demonstrate collusion (assuming collusion somehow relates to this court's authority to declare SRNCFC the winner of the April 6, 2017 election), many of the exhibits are problematic from an admissibility perspective. For example, none of the exhibits outside the certified administrative record appear to be authenticated. Exhibit 3E, 11 and 11A are blog pages and constitutes hearsay. Exhibits 3, 3B and 3D are unexplained except with an assertion about what they demonstrate with no foundation set forth for the opinion asserted. Exhibit 3C is an alleged screenshot containing hearsay about alleged board members. Exhibit 22 is a press release and constitutes hearsay.

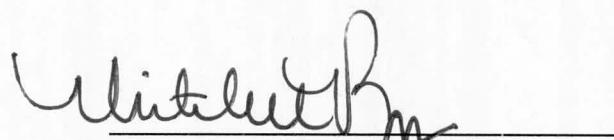
As a result of the foregoing, the court finds Petitioners have failed to carry their burden under Code of Civil Procedure section 1085. Petitioners do not establish any entitlement to a traditional writ of mandate.

CONCLUSION

For the foregoing reasons, the Petition is denied.

IT IS SO ORDERED.

February 5, 2020



Hon. Mitchell Beckloff
Judge of the Superior Court